

Message Text

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ACTION L-02

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TO AMEMBASSY BONN

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C O N F I D E N T I A L USBERLIN 2123

E.O. 11652: GDS

TAGS: PGOV, WB, GW

SUBJECT: CONVENANT ON CIVIL AND POLITICAL RIGHTS--

BK/L ON ARTICLE 41 DECLARATION

REFS:

A. STATE 235286; B) STATE 252292

C) BONN 17842; D) USBERLIN 1882

1. WE SHARE DEPARTMENT'S PUZZLEMENT (REFS A AND B) AT REASONS ADVANCED BY BRITISH AND FRENCH (REF C) FOR INCLUDING LANGUAGE IN BK/L ON REQUIREMENT FOR SENAT TO HAVE FRG ADVISE OTHER STATES "AS APPROPRIATE" OF ALLIED RESERVATIONS RESPECTING INCLUSION OF BERLIN IN FRG DECLARATION ON ACCEPTANCE OF ARTICLE 41 COMPLAINT MECHANISM. THERE IS NO GENERAL RULE FOR SUCH LANGUAGE TO BE USED IN BK/L'S IN WHICH ALLIES EXPRESS RESERVATION ON FRG TREATY, AND THERE IS NO PRINCIPLE AT STAKE WITH RESPECT TO ALLIED KOMMANDATURA CONTROL OF SENAT. DEPARTMENT'S RECORDS ARE ACCURATE. BK/L (73) 48 IS ONLY PRECEDENT FOR THIS LANGUAGE. THERE ARE, HOWEVER, IN OUR VIEW, ADVANTAGES FOR EMPLOYING SOMEWHAT SIMILAR LANGUAGE BOTH IN BK/L (73)48 AND IN PRESENT DRAFT BK/L WHICH IS ITS FOLLOW-ON.

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2. AK LEGAL COMMITTEE ADDRESSED THIS POINT IN ITS MEMORANDUM OF JULY 25, 1973 CONCERNING FRG ADHERENCE TO COVENANT AS FOLLOWS:

"LASTLY, THE LEGAL COMMITTEE WISHES TO DRAW ATTENTION TO THE FOLLOWING ADDITIONAL POINT: THERE MIGHT BE A DIFFICULTY RELATING TO THE COMMUNICATION BY THE FRG OF THE CONTENTS OF ANY BK/L THE AK DECIDED TO ISSUE TO THE OTHER PARTIES TO THE COVENANTS, A DIFFICULTY EXPERIENCED, IT WILL BE RECALLED, IN THE EXTENSION OF THE CIM/CIV CONVENTIONS TO BERLIN. IT IS SUGGESTED THAT ONE WAY OF DEALING WITH THIS WOULD BE FOR THE AK TO REQUIRE THE FRG, AS A CONDITION FOR PERMITTING THE EXTENSION, TO NOTIFY THE OTHER PARTIES TO THE COVENANTS OF THE ALLIED RESERVATIONS, IN PARTICULAR TO THAT RELATING TO THE ALLIED COMPETENCE TO DETERMINE WHETHER A DEPOSIT UNDER PART IV OF THE COVENANT ON CIVIL AND POLITICAL RIGHTS SHOULD BE MADE IN RELATION TO BERLIN (ARTICLE 41).

3. CIM/CIV EXPERIENCE WAS, OF COURSE, FRESH IN EVERYONE'S MIND AT TIME COVENANT WAS FIRST CONSIDERED. SINCE IT WAS FELT THERE WAS REAL CHANCE THAT ALLIED RESERVATION COULD BECOME RELEVANT TO COMPLAINT RAISED AGAINST FRG IN CONNECTION WITH BERLIN MATTER UNDER COVENANT, AK DECIDED THAT IT WAS APPROPRIATE TO MAKE EXPLICIT REQUIREMENT THAT INCLUSION OF BERLIN WAS CONDITIONED UPON FRG UNDERTAKING TO INFORM OTHER PARTIES OF THOSE RESERVATIONS AND THUS OBIVIATE POSSIBLE EMBARRASSMENT AT LATER DATE. HAPPILY NO FURTHER PROBLEMS HAVE ARISEN WITH RESPECT TO FRG RELUCTANCE TO INFORM ITS TREATY PARTNERS OF ALLIED RESERVATIONS. IT WILL BE RECALLED THAT WHILE ALLIES DO TAKE POSITION THAT FRG HAS OBLIGATION TO INFORM ITS TREATY PARTNERS OF ALLIED RESERVATIONS, THIS OBLIGATION IS ONLY IMPLICIT IN BKC/L52)6. AS POINT OF FACT, WE ARE DOUBTFUL THAT FRG DOES ADVISE ALL TREATY PARTNERS OF MANY ROUTINE ALLIED RESERVATIONS, FOR EXAMPLE, PLETHORA OF ROUTINE RESERVATIONS MADE TO BILATERAL AGREEMENTS ON SUCH MATTERS AS SCIENTIFIC RESEARCH. THIS IS HARDLY, IF CONFIDENTIAL

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EVER, PRACTICAL PROBLEM, AND WE SEE NO NEED TO ENGAGE FRG IN DISCUSSION ON IT. WHERE SPECIFIC PROBLEM CAN BE FORESEEN, HOWEVER, HOWEVER, IT MAY FROM TIME TO TIME BE USEFUL TO CALL SENAT'S ATTENTION SPECIALLY TO DESIRABILITY OF ENSURING THAT FRG FULFILLS OBLIGATION, BUT THIS WOULD SEEM BEST LEFT TO CASE BY CASE AK DECISION.

4. WORDS " AS APPROPRIATE" WERE INCLUDED IN BK/L 73)48

IN ORDER TO INDICATE THAT WE WISHED TO LEAVE IT TO FRG DISCRETION TO DETERMINE BEST METHOD OF INFORMING OTHER PARTIES OF ALLIED POSITION. THEY HAVE ADDITIONAL MEANING IN DRAFT BK/L ON ARTICLE 41 QUESTION. WE EXPECTED THAT IF FRG DECLARATION ON ACCEPTANCES OF ARTICLE 41 MECHANISM REFERRED TO BERLIN EXPLICITLY AND WAS CIRCULATED TO ALL PARTIES TO COVENANT IT WOULD ALMOST CERTAINLY PROVOKE SOVIET PROTEST THAT WOULD LEAD TO ANOTHER ROUND SIMILAR TO THAT RECENTLY COMPLETED WITH RESPECT TO COVENANT ITSELF. OUR DETERMINATION WAS THAT BERLIN NEED NOT BE MENTIONED EXPLICITLY IN FRG DECLARATION SINCE THAT DECLARATION WAS NOT SEPARATE INTERNATIONAL AGREEMENT REQUIRING SPECIAL MENTION OF BERLIN PURSUANT TO BKC/L 52)6. WE ALSO CONSIDERED THAT IT WOULD BE SUFFICIENT FOR FRG TO CALL ATTENTION TO ALLIES' BERLIN RESERVATIONS ONLY OTHER STATES MAKING DECLARATION ON ARTICLE 41. SINCE SOVIETS AND EAST EUROPEANS IN GENERAL CAN BE EXPECTED TO ABSTAIN FROM SUCH DECLARATIONS IN VIEW OF THEIR LONG-STANDING OPPOSITION TO OPTIONAL PARTS OF HUMAN RIGHTS TREATIES THAT PROVIDE OPPORTUNITIES FOR INTERNATIONAL REVIEW OF DOMESTIC SITUATION, FRG WOULD NOT HAVE TO CALL SOVIET ATTENTION DIRECTLY TO BERLIN'S INCLUSION IN ARTICLE 41 DECLARATION, AND LIKELIHOOD OF ANOTHER EXCHANGE OF NOTES WOULD BE REDUCED ACCORDINGLY.

5. WE NOTE THAT BONN GROUP SLIGHTLY REVISED LANGUAGE OF SECOND PARAGRAPH SO THAT FRG WOULD BE EXPECTED TO ADVISE "AS APPROPRIATE" ALL PARTIES TO ORIGINAL COVENANT. THIS REVISION STRIKES US AS PREFERABLE TO ORIGINAL BERLIN LANGUAGE (REF D) WHERE "AS APPROPRIATE" CAME AFTER "SENAT WILL," PROVIDED THAT FRG UNDERSTANDS CONFIDENTIAL

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IT TO MEAN THAT IT IS REQUIRED TO INFORM ONLY THOSE PARTIES TO COVENANT WHO MAKE ARTICLE 41 DECLARATIONS. IF FRG HAS OTHER UNDERSTANDING, WE BELIEVE IT WOULD BE PREFERABLE TO RETURN TO MORE LIMITED ORIGINAL BERLIN LANGUAGE WITH SINGLE MODIFICATION THAT "AS APPROPRIATE" SHOULD COME AFTER "DECLARATIONS." SELIGMANN

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